

## Summary of Proposed Ordinance Relating to Zoning, Site Alteration and Critical Areas

This summary applies to the proposed Critical Areas Ordinance dated December 10, 2002, and fulfills the state Growth Management Act and King County Code 20.18.100 requirement for a “plain language” summary.

Some of these changes were included in proposed ordinances that were transmitted to the King County Council but not adopted. These items are noted using the following abbreviations:

SAO: The proposed amendments to the Sensitive Areas Ordinance, King County Code (K.C.C.) chapter 21A.24 pending at council (Proposed Ordinance 1999-0353).

SALT: The proposed Site Alteration Code pending at council (Proposed Ordinance 2000-0525). This is a proposed update to the Clearing and Grading Code.

### **New Chapter, “Permits, Emergency Actions, Permit Exceptions”**

**Section 1** – Administrative section to create a new chapter in K.C.C. Title 21A. This section also recodifies K.C.C. 16.82.050 and 16.82.060, each as amended by this ordinance, as sections in this new chapter.

**Section 2** – Permits required. (*new*) States that all activities, whether requiring another permit or not, are subject to the conditions of this chapter. Provides that permits are necessary for forest practices and clearing and grading. Except where specifically excepted in section 10, a separate permit shall be required for each site unless the activity is approved to occur on multiple sites under a programmatic permit. [SALT 73]

**Section 3** – Programmatic permits. (*new*) Authorizes the department to issue programmatic permits for any clearing or grading activity except mineral extraction, and for forest practices conducted under a county-approved forest management plan. Activities eligible for a programmatic permit include clearing and grading activities which are subject to repetition as part of an ongoing program, which have the same or similar identifiable impacts for each activity, and for which permit conditions pertaining to all sites can be developed. Activities shall be subject to inspection by the department, and the programmatic permit is subject to the same application, review and renewal requirements as a regular clearing and grading or forestry permit. Programmatic permit conditions shall apply uniformly to each alteration authorized and at all locations covered by the permit. The department may require permit revision or take other action if necessary to ensure adequate regulation and impact protection. [SALT 74]

**Section 4** – Application acceptance. (*new*) Provides requirements for the department’s review for acceptance of submitted permit applications.

- Applicants must be consistent with K.C.C. 20.20.040 and the permit process and procedures provisions of K.C.C. chapter 20.20.
- No application shall be accepted for a site that has been found in violation except to accomplish a required restoration or cure.
- No permit application, except forestry permits, shall be accepted unless accompanied by appropriate application for the development of a permanently established use consistent

with the underlying zoning; together these shall constitute the conversion to the permanently established use.

- No permit application, except forestry permits, shall be accepted on lands designated Timberland unless applicant demonstrates that all payments and penalties resulting from the change in use pursuant to RCW 84.34.080 have been paid.
- No applications for uses inconsistent with ongoing forestry (such as subdivision of land, or preparation for residential or commercial buildings) shall be accepted for 6 years for lands cleared or graded pursuant to a Class II, III, or IV special forest practice or on lands cleared or graded without proper authorization, unless:
  - the applicant can demonstrate the clearing was consistent with the Conversion Option Harvest Plan and approved by King County and the state; or
  - the applicant can demonstrate they were victims of theft or fraud, they can fully restore any areas cleared in violation of King County regulations, and the restoration will be required through an approved mitigation plan.

[SALT 75]

**Section 5** – Permit application requirements. (*K.C.C. 16.82.060*) At minimum these include:

- description of the proposed work;
- estimate of work by volume and total area cleared as a percentage of total site area;
- property boundaries, easements and setbacks; identification of critical areas; clearing restrictions; critical drainage area requirements; and special district overlays;
- plans and specifications to include:
  - 1:2000 scale vicinity map with north arrow;
  - horizontal and vertical scale;
  - size and location of existing improvements within 50 feet of project, indicating which will remain and which will be removed;
  - location of proposed cleared areas;
  - existing and proposed contours at maximum 5-foot intervals, and extending 100 feet beyond the project edge;
  - two cross sections;
  - proposed erosion and sediment control plan; and
- environmental checklist.

The department may require additional information, which may include:

- higher accuracy in contours and more details in plans;
- location of open space tracts or conservation easements;
- calculations of the total proposed cleared area as a percentage of total site area;
- detailed plans showing drainage information;
- a determination of whether drainage review applies and, if applicable, all drainage plans and documentation consistent with the King County Surface Water Design Manual;
- restoration plan;
- additional studies to substantiate submitted materials or compliance with this title, especially in relation to critical areas.

Plans and specifications must be prepared and signed by a civil engineer if they are prepared in conjunction with a proposed structure, include permanent drainage facilities, or propose alterations in steep slope or landslide hazard areas. Also, the reference to clearing and grading permit requirements were removed from this section to section 4. [SALT 76]

**Section 6** – Additional application requirements. (*new*) Provides additional application requirements for a development permit application involving any clearing or grading. The applicant shall provide information about the land use context, including critical areas, wildlife habitat conservation areas, existing development, vegetative cover, and soils. The applicant shall assess the impacts of proposal on critical areas and existing native vegetation on and mapped within one-quarter mile of the site, and provide analysis of how the development proposal avoids or minimizes these impacts.

The permit application for a development proposal must also provide an analysis of how the proposal complies with the following standards:

- If outside the urban growth area, a minimum of 65 percent native vegetation or other open space on the parcel shall be set aside and remain undeveloped, if not already developed. Any critical areas, including any mapped priority habitats, shall be considered as part of this set-aside 65 percent. To the maximum extent practicable, the native vegetation and open space shall be connected to critical areas either on the parcel or on adjacent parcels.
- If outside the urban growth area, a maximum of 10 percent effective impervious surface shall be allowed on the parcel. If the amount of existing effective impervious on the parcel exceeds 10 percent, new effective impervious surfaces shall not be allowed.
- To the maximum extent practicable, new structures or site disturbance shall be located within or adjacent to existing developed areas.
- Any new development, including any clearing and grading, shall be located as far as possible from any critical areas on the lot or on adjoining lots, to the maximum extent practicable;
- To the maximum extent practicable, any new development shall minimize fragmentation of vegetative cover on the site and within 1/4 mile of the site. This section lists priorities of vegetative cover types for any fragmentation of vegetative cover, and gives guidance for determining the extent of fragmentation;
- To the maximum extent practicable, new development or site disturbance shall keep vegetative cover types on the site connected to similar vegetative cover types within 1/4 mile of the development site. Connectivity between streams and wetlands, streams and forest and wetlands and forest shall be given priority consideration; and
- Any new development shall minimize intrusion into areas of native vegetation.

**Section 7** – Permit review and final decision. (*new*) The department shall review permit applications and may impose conditions upon permit approval as needed to mitigate identified project impacts, and shall deny applications that are inconsistent with the provisions of this title or other applicable regulations. Shoreline development permit requirements shall be incorporated into the permit conditions as required. The department may combine the review of the permit application with any other permits and approvals necessary for the development proposal. Any decision to approve, condition or deny a permit may be appealed pursuant to K.C.C. 20.20.20. [SALT 77]

**Section 8** – Permit issuance. (*new*) The director may issue a permit if the proposed alteration will not adversely affect the character of the site for present lawful uses, or for future on-site

and neighboring development. A notice to proceed shall not be issued for an approved permit until all federal, state and local agencies having jurisdiction have approved the work or provided formal consultation. Once a permit is approved, work shall not be done that is not provided for in the permit. [SALT 78]

**Section 9** – Permit duration and renewal. (*new*) Provides time limits and criteria for periodic review and renewal of permits, based upon 2-year increments. It also provides authority to trigger periodic review of forestry and mineral extraction permits if activities are not in compliance with requirements. [SALT 79]

**Section 10** – Emergency actions. (*new*) If activities or alterations requiring a permit are undertaken as an emergency action, it shall not be counted as a violation provided that the department is notified within 48 hours after the alteration. A pre-application conference and tribal notification are also required. The department shall establish a date by which required permit applications and information, including a critical areas report, shall be submitted. The department shall identify corrective action or mitigation, and shall confirm that the alteration was an emergency action based upon:

- imminent danger or risk to the public health, safety and welfare or to persons and property;
- the emergency was unanticipated and not caused by the applicant's action or inaction;
- immediate emergency action was necessary; and
- the emergency action was in direct response to and did not exceed the dangers and risks posed by the emergency. [SAO 83; SALT 80]

**Section 11** – Exceptions. (*K.C.C. 16.82.050*) Deletes old requirements and provides new requirements for specific activities that are excepted from the requirements of obtaining a permit prior to undertaking forest practices or clearing and grading activities. Excepted activities outside of critical areas and their buffers are:

- excavation less than 5 feet in vertical depth, no more than 100 cumulative cubic yards on a single site;
- fill less than three feet in vertical depth, no more than 100 cumulative cubic yards on a single site;
- grading that cumulatively produces less than 5,000 square feet of impervious surface on a single site, not including road resurfacing;
- clearing of less than one acre (unless a Class IV forest practice or a development proposal site subject to clearing restrictions);
- removal of noxious weeds, Himalayan blackberry and evergreen blackberry;
- use of herbicides or other hazardous substances except on a development proposal site which is subject to clearing restrictions;
- clearing or grading within a public road right-of-way or rail right-of-way.

Within critical areas and their buffers, the following are excepted from permit requirements:

- clearing of less than one acre in coal mine, volcanic, seismic or flood hazard areas.
- clearing in a roadway, subject to specific criteria;
- removal of noxious weeds, subject to specific criteria;
- grading in volcanic, seismic, coal mine or erosion hazard areas or in channel migration areas:
  - within a public road right-of-way except for installation of gas, water, sewer or other pipelines within a coal mine hazard area; or

- out of a public road right-of-way if:
  - the excavation is less than five feet in vertical depth, no more than 100 cumulative cubic yards on a single site;
  - the fill is less than three feet in vertical depth, no more than 100 cumulative cubic yards on a single site; and
  - grading cumulatively produces less than 5,000 square feet of impervious surface;
- grading in a roadway located in a landslide hazard area, except for excavation for roadway surface replacement or excavation for underground utility work;
- grading in a roadway located in a steep slope hazard area, wildlife corridor or in the buffer of a steep slope hazard area, wetland or stream;
- fish habitat enhancement projects meeting the criteria of RCW 75.20.350;
- minor stream or wetland restoration by or sponsored by a public agency or tribe, subject to specific criteria;
- scientific sampling for salmonids pursuant to an approved sampling permit.

The following activities are excepted in and out of critical areas or their buffers, with certain qualifications and restrictions for salmonid streams, and critical areas and buffers:

- depositing or covering garbage at a county solid waste facility;
- excavation of cemetery graves;
- forest practices performed as Class I, II, III or IV Special forest practice in the F (forest) zone;
- forest practices performed as a Class II, III or IV Special forest practice outside the F (forest) zone, if the forest practice occurs on a site in long-term forestry that has not been subdivided since January 1, 1960, is located outside of urban growth area, is reforested in compliance with RCW 76.09.070, or has not been or is not proposed to be converted to another use;
- emergency tree removal, subject to specific criteria;
- horticultural and agricultural activities in continuous existence since November 27, 1990, including mowing hay, grass or grain crops, preparing soil, planting, harvesting, rotating crops, grazing livestock, commercial orchards, nurseries, hybrid poplar tree farms, Christmas tree farms; and the conversion among any of these activities;
- grading for construction or removal of livestock manure storage facilities or associated facilities (allowed in the flood fringe only if the facility is flood-proofed), subject to specific criteria;
- maintenance of cemetery graves, lawns and landscaping, driveways or private access roads, outdoor public park areas, facilities and trails, golf courses, roadside ditches (unless used by salmonids), cut or engineered slopes, flood control or drainage facilities maintained by a public agency, maintenance of activities associated with agriculture or horticulture in continuous existence since at least November 27, 1990;
- culvert maintenance;
- maintenance of farm ponds, fish ponds, livestock watering ponds and manure storage facilities not connected or draining to a stream.

[SALT 82]